

The State Vs. Sankar Naik

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Court : Orissa

Decided On : Apr-02-1985

Reported in : 1985(II)OLR93

Judge : S.C. Mohapatra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304, 323 and 324

Appeal No. : Government Appeal No. 6 of 1981

Appellant : The State

Respondent : Sankar Naik

Advocate for Def. : C.C. Dash, Adv.

Advocate for Pet/Ap. : P.K. Mohanty, Addl. Standing Counsel

Disposition : Appeal allowed

Judgement :

S.C. Mohapatra, J.

1. In this appeal under Section 378, Code of Criminal Procedure, the State Government has challenged the acquittal of the respondent from a charge under Section 304, I. P. C. The learned Asst. Sessions Judge has convicted the respondent under Section 323, I. P, G and sentenced him to undergo R. I. for nine

months.

2. Prosecution case, in short, is that in the evening of 23.7.1979, the respondent abused his mother and when protested by the deceased, the respondent dealt two lathi blows on his head which ultimately resulted in his death on 2. 8. 1979. It is also alleged that the respondent dealt lathi blows on the other parts of the body of the deceased.

3. First information was lodged by P. W. 1, the mother of the respondent and of the deceased, on 24. 7. 1979 at about 2 a. m. at Balimi Police Station which is at a distance of 18 kilometres from the village of occurrence, Patla. The injured was removed to Khajutiakanta Primary Health Centre and the condition of the injured being serious he was then removed to the headquarters hospital at Dhenkanal where he died on 2. 8. 1979.

4. The plea of defence u one of denial and it was stated in the 313, Cr. P. C. statement that the deceased was drunk and sustained the injuries on account of fall.

5. From the evidence of the Medical Officer (P. W. 3) who conducted the autopsy over the dead body of the deceased and prepared the post-mortem report, it is found that the deceased had four lacerated injury some on the left occipital region of the scalp, one on the right occipital region of the scalp, one on the medial aspect of the right index finger and the last on the anterior aspect of left shin, lower end 6' above the ankle joint. On dissection P. W.3 found fracture of the skull. All the injuries were ante mortem. P. W. 3 was of opinion that the fracture of the skull accompanied with haematoma would ordinarily cause death. On cross-examination, he has clarified that the injuries which were found on the person of the deceased cannot be caused by a single fall on rough surface but can be caused by successive falls. It is, thus clear that the death was culpable homicide.

6. The learned Asst. Sessions Judge on application of the entire evidence on record has found that the accused-respondent assaulted the deceased which ultimately caused his death. After perusal of the evidence on record, I am in agreement with the finding of the learned Assistant Sessions Judge.

7. The main point for decision is the nature of offence committed by the respondent.

8. Mr. P. K. Mohanty, the learned Addl. Standing Counsel, who appeared as Public Prosecutor in this case, submitted that the conviction, of the respondent should have been one under Section 304, I. P. C.

9. The deceased was the elder brother of the respondent, They are rustic villagers, In the course of altercation, suddenly the respondent assaulted the deceased without any premeditation. The injuries include fracture of the skull which was the cause of death coupled with haematoma. The respondent in such circumstance, is guilty for having committed culpable homicide not amounting to murder to come under Part II of Section 304, I. P. C. Under no circumstance, such action of the respondent can be brought under Section 323, I. P. C when the injuries are kept in view. Accordingly, the respondent is convicted under Section 304, I. P. C. and sentenced to undergo R. I. for four years.

10. In the result, the appeal is allowed.